IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

CIVIL APPLICATION NO.657 OF 2006

IN

WRIT PETITION (L) NO.10653 OF 2004

Shri Sam Deolaliwala .. Applicant

Versus

Bal Kurshedbanu M.Sanjana Trust

& Anr. .. Respondents

Mr.Rajendra Solankar for applicant

Mr.R.S.Patil for respondent

CORAM : P.V.KAKADE, J.

DATE : 24th MARCH, 2006

P.C.:

1. Heard both sides.

2. This application is for restoration of the writ petition, which was dismissed for default by order dated 4th October, 2005. However, advocate for the respondents

brought to the notice of this court that the decree was already executed and for that purpose by order dated 6.3.2006 he was directed to file affidavit on record. Accordingly, he has filed affidavit, which shows that the decree was already executed. The said affidavit is supported by the Bailiff's Report which shows that the physical possession was handed over to the respondent. At this stage the learned counsel for the petitioner submits that the alleged fact that the possession was handed over is disputed and for that purpose contempt proceeding is taken out on the ground that the respondents attempted to obtain forcible possession.

2. In my considered view, this is not the forum to agitate those aspects. We are concerned with the issue whether the application for restoration is to be decided at this stage or not. In view of the facts and circumstances brought to the notice of this court, the application is rendered infructuous and stands disposed of as such with no order as to costs.

3. However, it is clarified that the petitioner would be at liberty to move this court afresh for restoration of the writ petition, if he succeed in

establishing that he was not dispossessed by virtue of execution proceeding.